MOHD RAFIZI RAMLI v. DATO' SRI DR MOHAMAD SALLEH ISMAIL & ANOR

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
HANIPAH FARIKULLAH JCA
KAMALUDIN MD SAID JCA
[CIVIL APPEAL NO: W-02(NCVC)(W)-2249-12-2016]
1 OCTOBER 2019

TORT: *Defamation – Defence – Fair comment – Whether defence would succeed if primary facts are true – Whether malice or falsehood established – Whether comment was honest expression of genuine opinion – Whether fair and bona fide comments or criticism upon matter of public interest – Whether matter could have been settled by an apology – Defamation Act 1957, s. 10 – Federal Constitution, art. 10*

The first defendant ('appellant'), at a press conference, made the allegations that a portion of the proceeds of the Government loan given to the second respondent ('second plaintiff'), for the purposes of the national feedlot centre, had been deposited with a commercial bank, and this deposit was then used as leverage for personal loans that were used for the purchase eight units of offices by the first respondent ('first plaintiff'), the chairman and director of the second plaintiff. When the appellant made the statement, he was not aware that the application for the loan was cancelled by the bank and/or did not proceed. This fact was also not brought to the notice of the appellant until the plaintiffs commenced a defamation action against the appellant and the second defendant, the publisher of the article containing the statements. The High Court held, *inter alia*, that (i) the statements were defamatory of the plaintiffs; (ii) the defence of fair comment was not available to the appellant as the statements were statements of fact and did not constitute a comment; and (iii) the appellant had failed to make out the defence of qualified privilege. The court awarded damages to the plaintiffs and hence, this appeal.

Held (allowing appeal)
Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) A fact which has happened will remain as a fact, notwithstanding subsequent events may nullify the fact and make the fact as non-issue. Fair comment is one of the pillar defence to an action in defamation and this pillar must not be read only with the common law cases but also art. 10 of the Federal Constitution. In a defence of fair comment, if the primary facts are true, in the absence of malice and/or falsehood, the defence of fair comment should ordinarily succeed. Hence, the true test of fair comments essentially is 'whether the comment is an honest

A expression of a genuine opinion'. The phrase 'honest expression' and 'genuine opinion' does not relate to 'physical facts' but 'psychological facts'. Psychological facts related to the state of mind of the defendant to find liability or otherwise needs the court to take a holistic view of the case, the law and the Federal Constitution. (paras 6, 8 & 11)

B **(2)** Fair and *bona fide* comments or criticism upon matter of public interest cannot be scandalous or libellous or even warranting criminal defamation. The plaintiffs, who initiated an action for defamation without complying the spirit and intent of s. 10 of the Defamation Act 1957 ('Defamation Act'), had abused the judicial process and may also C have committed other torts inclusive of malicious prosecution. The facts of this case was not one related to malice and/or falsehood. The statement made in respect of the purchase of eight units of offices was correct. However, the plaintiffs, during the cause of trial, stated that the sale and purchase agreement of the units to establish the plaintiffs' D statement were not true as the purchases were not proceeded with, through loans. This information which only the plaintiffs could have known was not mentioned in the notice of demand sent to the appellant. Had the fact been disclosed, the matter would have been settled by an apology, as provided by s. 10 of the Defamation Act. (paras 10-14)

E ***Obiter:***

(1) The High Court, in all defamation action, should, at the case management stage, direct the matter to be transferred to the sub-courts, if the quantum on the subject matter of dispute will be within the subordinate courts' limit. (O. 57 of the Rules of Court 2012). Abusing F the High Court process in not filing matters in the sub-courts, when the sub-court has jurisdiction to deal with the matter must be taken by the High Court seriously. Trial courts should warn counsel that costs order may be made against counsel personally if ultimately the courts' jurisdiction has been abused. (para 7)

G **Case(s) referred to:**

Bonnard v. Perryman [1891] 2 Ch 269 ***(refd)***

Chew Peng Cheng v. Anthony Teo Tiao Gin [2008] 8 CLJ 418 HC ***(refd)***

Cream Holdings Ltd and Others v. Banerjee and Another [2005] 1 AC 25 ***(refd)***

CS Wu v. Wang Look Fung & Ors [1981] 1 LNS 69 CA ***(refd)***

H *Kyros International Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri [2013] 3 CLJ 813 CA* ***(refd)***

Macvilla Sdn Bhd v. Mervyn Peter Guan Yin & Anor (W-01(A)-218-03-2018) (Unreported) ***(refd)***

Pegawai Pengurus Pilihanraya Dewan v. Streram Sinnasamy & Ors [2019] 1 LNS 589 CA ***(refd)***

I *Slim v. Daily Telegraph Ltd [1968] 2 QB 157* ***(refd)***

Legislation referred to:
Defamation Act 1957, s. 10
Federal Constitution, art. 10
Rules of Court 2012, O. 57

For the appellant - Ranjit Singh, Ng Siau Sun & Carmen Ng; M/s Sun & Michele
For the respondent - Sarah Abishegam, Noor Farhah Mustaffa & Ian Hannibal; M/s Shafee & Co

[Editor's note: For the High Court judgment, please see Datuk Seri Dr Mohamad Salleh Ismail & Anor v. Mohd Rafizi Ramli & Anor [2016] 9 CLJ 813 ( ).]

Reported by S Barathi

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] The appellant/first defendant in a defamation action appeals against the decision of the learned High Court Judge for awarding a sum of RM150,000 as damages plus costs, etc. The respondents/plaintiffs also have a cross-appeal on the decision of the learned judge.

[2] In the instant case, the first plaintiff had made an application for loan for the purchase of eight units of offices, with the strength of money deposited in the account of the second plaintiff, which money has nexus to Government funding. When the first defendant made the statement, he was not aware that the application for loan – was cancelled by the bank and/or did not proceed. This fact was also not brought to the notice of the first defendant until the plaintiffs commenced the action.

[3] The brief facts and the grounds of decision of the learned judge has been placed in a rudimentary manner before us and to save courts time, we repeat and it reads as follows:

Brief Facts And Grounds

Brief facts:

1. The 1st Plaintiff was the chairman and director of the 2nd Plaintiff while the 1st Defendant was a politician.
2. In a press conference held by the 1st Defendant, he alleged that a portion of the proceeds of government loan given to the 2nd Plaintiff for the purposes of the national feedlot centre had been deposited with a bank. The deposit was then used as leverage for personal loans for the purchase of eight units of offices ("the statements").
3. The basis of these contentions were bank records which the 1st Defendant received anonymously, revealing:

– customer profiles of the Plaintiffs, companies related to the Plaintiffs and the directors of such companies; and

– the details of the eight office units recorded as collateral in the bank's collateral system ("the documents").

4. The 2nd Defendant published an article on the allegations made by the 1st Defendant and uploaded a video clip of the press conference on its website.

5. The Plaintiffs thus commenced an action for defamation against:

– the 1st Defendant on the grounds that the statements were defamatory of the Plaintiffs; and

– the 2nd Defendant for the publication of the video clip recording of the press conference.

6. In claiming for damages, the Plaintiffs contended that following the publication of the statements, the business of the 2nd Plaintiff deteriorated significantly.

7. The 1st Defendant raised the defences of fair comment and qualified privilege while the 2nd Defendant raised the defence of reportage.

8. The High Court allowed the Plaintiffs' claim against the 1st Defendant; and dismissed the Plaintiffs' claim against the 2nd Defendant.

9. Thus, the Plaintiffs *vide* Appeal 2248, appealed against the decision of learned High Court Judge in dismissing its claim against the 2nd Defendant (However, this Appeal was withdrawn by the Plaintiffs).

10. While Appeal 2249 is the Appeal by the 1st Defendant against the decision of learned High Court Judge in dismissing the 1st Defendant's defence on fair comment, in not allowing the 1st Defendant to prove on the misappropriation of public funds by the Plaintiffs, and in dismissing the 1st Defendant's defence on qualified privileged.

11. **Finding Of Learned High Court Judge**

Issue (i) whether the statements made by the 1st Defendant were defamatory of the Plaintiffs.

1. The statements were defamatory of the Plaintiffs as they had the effect of lowering the estimation of the Plaintiffs in the eyes of the public.

2. A reasonable reader reading the statements would conclude that public funds were put at risk by the conduct of the Plaintiffs, used as a guarantee or leverage to obtain personal loans, and expanded to purchase real estate in the private names of the 1st Plaintiff's family members.

Issue (ii) whether the words in the statements were a commentary and, if yes, whether the comments were based on facts established to be true

1. The defence of fair comment was not available to the 1st Defendant. The statements made by the 1st Defendant were couched as statements of fact and did not constitute a comment. The statements were premised on the documents which the 1st Defendant had obtained. However, there was nothing in the documents that suggested that the deposit by the 2nd Plaintiff had been used either as leverage or as security or collateral for the grant of any loan. The basic facts available to the 1st Defendant did not support the inference that he had drawn from those facts.

Issue (iii) whether the 1st Defendant established defence of qualified privilege

1. The 1st Defendant's defence of qualified privilege had not been made out.

2. The 1st Defendant testified that he had no way of verifying the accuracy or completeness of the information contained in the documents. The 1st Defendant had time to analyse the contents of the documents and to prepare a three-page press statement. If there was sufficient time to have prepared a press statement, then there would have been time to contact the Plaintiffs for verification of the allegations. Nonetheless, no attempt was made to contact the 1st plaintiff to verify the inferences that he had drawn from the contents of the documents.

Issue (iv) whether defence of reportage available to the 2nd Defendant?

1. The effect of the reporting by the 2nd Defendant was to report the fact that the statements had been made at the press conference convened by the 1st Defendant rather than for the purpose of persuading the reader and/or viewer of the truth of their contents.

2. The video clip was limited to the inclusion of captions and graphics and was a faithful recording of the actual events that had taken place.

3. The reporting was also done in a fair, disinterested and neutral way. The accompanying news article clearly attributed quotes to the 1st Defendant in quotation marks and the journalist did not adopt the statements as her own.

4. The urgency of the matter justified the publication of the reporting because the 2nd Defendant is part of an alternative media where currency is placed on the immediacy of reporting. The decision by the 2nd Defendant to publish the report and the accompanying video clip without verification from the Plaintiffs could not be faulted.

Issue (v) whether the Plaintiffs were entitled to damages?

1. The 1st Defendant was liable in damages to the Plaintiffs. The 1st Plaintiff was awarded the global sum of RM 150,000 in damages, taking into consideration that, *inter alia*:

   i. he was a well-known and respected person; and

   ii. the nature of the allegations against him was serious and suggestive of criminal impropriety.

2. The nature of the allegations against the 2nd Plaintiff was different from that of the 1st Plaintiff. The 2nd Plaintiff could not claim to have a reputation that was as highly-regarded as the 1st Plaintiff. Therefore, the 2nd Plaintiff was awarded the global sum of RM50,000 in damages.

3. The deterioration and the loss of profits claimed to have been suffered by the 2nd Plaintiff's business had nothing to do with the act of the 1st Defendant.

Preliminary Observations

[4] At the commencement of hearing of the appeal, learned counsel for the first defendant had informed the court that the first defendant is limiting the appeal to the defence of fair comment.

[5] To appreciate the reason why we allowed the appeal, it must be noted that a statement of 'fact' of a happening of an event and reporting thereafter will not entail a success in a defamation suit. This is so, because truth is a complete defence. Only in the event the fact alleged is not the truth will other defences such as absolute privilege, qualified privilege, justification, fair comment, etc. apply to stand to mitigate the wrong statement of facts. The availability of these defences will also show that defamation action are technical in nature and the law does not give an absolute right for a person not to be defamed. The irony of the defamation action is that despite courts currently granting damages, the quantum of which will be within the sub-court jurisdiction, plaintiffs have often abused the process by filing the suit in the High Court. In addition, recognition of defamation jurisprudence in the light of advancement of technology like internet, Facebook and WhatsApp have diminished its value as well as utility. Further, when it relates to politicians or persons who have nexus to politicians, etc. art. 10 of the Federal Constitution guarantees freedom of speech within the spirit and intent of the Federal Constitution as well as rule of law. In *Chew Peng Cheng v. Anthony Teo Tiao Gin* [2008] 8 CLJ 418, Hamid Sultan bin Abu Backer JC (as he then was) on these issues, held:

(1) The plaintiff's claim for defamation must fail. The definition of defamation is not a static concept to give recognition to the time immemorial principle that there must be certainty in law. The words complained of by the plaintiff could not be construed as defamatory in this time and era where public perception to accountability,

transparency, good governance in respect of people holding office, or position, or those involved in the affairs of organisation such as associations has become more and more a subject matter of critical scrutiny by the public or by those who are associated with it.

(2) As such, purely objecting to criticism by filing suits for defamation in millions of ringgit when issues of transparency, accountability and good governance is the focal point of the attack, does not promote constitutional rights to freedom of speech. The court would be reluctant to entertain them unless the attacks are in the nature which has no nexus and/or is not inextricably interwoven to the concept of transparency, accountability and corporate governance, and such acts are done with malice purely to assassinate the character of the individual personality and destroy his family, quality of life and privacy. The words complained of do not expose the plaintiff to hatred, ridicule or contempt or contempt in the mind of a reasonable man in this time and era, or would tend to lower the plaintiff in the estimation of right thinking members of society.

(3) The circumstances leading to the publication of the purported offensive words and the defendants have proved substantial justification of the whole libel and there did not appear to be any element of malice, taking into consideration the complaint and dissatisfaction was addressed to the plaintiff directly.

(4) The submission of the defendants on fair comment had some merits and the defendants were entitled on the facts of the case to make such comments though it may be critical. Any fair minded person would have reasonably done so. There was no element of malice. It could not be said the facts stated in the publication were false or the defendant made the publication recklessly.

[6] It must also be emphasised that a fact which has happened will remain as a fact, notwithstanding subsequent events may nullify the fact and make the fact as non-issue. This statement in the context of defamation can be best explained as follows: A, in the presence of B, forges the signature of his employer in the cheque slip of the employer. B subsequently makes a statement of A's conduct. Even though the statement of forgery of A will be defamatory, the law provides absolute defence to B if the statement is the truth. However, if A without the knowledge of B has destroyed the cheque and sues for defamation, in our view, he ought not be allowed to succeed if A has not brought to the notice of B and ask B to tender an apology. If courts were to say otherwise, it will lead to entrapment with a view to unjust enrichment. To stop such conduct *inter alia* Legislature have enacted s. 10 in the Defamation Act 1957.

A **Case Management And Transfer Of Proceedings**

[7] The High Court in all defamation action should at the case management stage itself direct the matter to be transferred to the sub-courts, if the quantum on the subject matter of dispute will be within sub-ordinate court limit. (See O. 57 of the Rules of Court 2012). Abusing High Court process in not filing matters in the sub-courts, when the sub-court has jurisdiction to deal with the matter must be taken by the High Court seriously. Trial courts should warn counsels that costs order may be made against counsel personally if ultimately the courts' jurisdiction has been abused.

C **Fair Comment**

[8] In a defence of fair comment, if the primary facts are true, in the absence of malice and/or falsehood, the defence of fair comment should ordinarily succeed. This position will also be consistent with art. 10 of the Federal Constitution. Only when the primary facts are not true, other facts which the learned trial judge had admirably deliberated on the elements of fair comment to succeed becomes relevant. The true test of fair comment essentially is 'whether the comment is an honest expression of a genuine opinion'. (See *Slim v. Daily Telegraph Ltd* [1968] 2 QB 157; *Chew Peng Cheng v. Anthony Teo Tiao Gin* [2008] 8 CLJ 418). The phrase 'honest expression' and 'genuine opinion' does not relate to 'physical facts' but 'psychological facts'. Psychological facts related to the state of mind of the defendant to find liability or otherwise needs the court to take a holistic view of the case, the law and the Federal Constitution. (See *Kyros International Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2013] 3 CLJ 813; [2013] 2 MLJ 650).

[9] It is well-established that fair and *bona fide* comments or criticism upon matter of public interest cannot be scandalous or libellous or even warranting criminal defamation, etc. for democracy to survive. To put it mildly, punishing persons having some or all virtues of Socrates, Plato, etc. to be punished by way of imprisonment or monetary sum, etc. will not augur well for accountability, transparency and good governance in matters of public interest. Such persons are truly protected by not only under the law of defamation but also under art. 10 of the Federal Constitution which relates to freedom of speech guaranteed by the Federal Constitution. (See *Bonnard v. Perryman* [1891] 2 Ch. 269; *Cream Holdings Ltd and Others v. Banerjee and Another* [2005] 1 AC 253).

[10] The plaintiffs in this case who initiated an action for defamation without complying within the spirit and intent of s. 10 of the Defamation Act on the facts of case had abused the judicial process and may also have committed other torts inclusive of malicious prosecution.

[11] Fair comment is one of the pillar defence to an action in defamation and this pillar must not be read only with the common law cases but also art. 10 of the Federal Constitution which is the supreme law of the land. Common law cases cannot limit the protection given under the Constitution. (See *Pegawai Pengurus Pilihanraya Dewan v. Streram Sinnasamy & Ors* [2019] 1 LNS 589; *Macvilla Sdn Bhd v. Mervyn Peter Guan Yin & Anor* (W-01(A)-218-03-2018)). Thus, the test in the Malaysian context must be related to malice and/or falsehood. Malice and/or falsehood does not relate to free speech guaranteed under the Federal Constitution. When malice and/or falsehood is established, defamation generally ought to succeed. The fact of this case is not one related to malice and/or falsehood. The learned judge's findings also reflect the same.

[12] What is important to note in this appeal is the statement made in respect of the purchase of eight units of offices was correct. However, the plaintiffs, during the cause of trial, gave evidence to say that the sale and purchase agreement of the units to establish the plaintiffs' statement were not true as the purchases were not proceeded with, through loans. This information which only the plaintiffs could have known was not even mentioned in the notice of demand dated 28 June 2012, which was sent by the plaintiffs to the appellant. This is supported by the evidence during the cross-examination of the first defendant as follows:

> MDM And by foundation I mean the purchase and the financing of these 8 properties. It did not exist at the time you made your statement. It had been withdrawn by the bank.
>
> RR Well when I made the statement so basically I was not aware. So therefore the intention at the time and the main issue here is the leveraging of the fixed deposit to obtain the mortgages. So while the loans could have been finally cancelled but the issue at hand still exists and valid that there was mortgages that were approved given the loan were processed; were approved.

[13] If that fact had been disclosed, the matter may have been settled by apology, etc. (See *CS Wu v. Wang Look Fung & Ors* [1981] 1 LNS 69; [1981] 1 MLJ 178). The said letter of demand dated 28 June 2012 read as follows:

> Date: 28th June, 2012
>
> Our Ref: WSH/4259/12/Lit-NLFC/WS
>
> **Mohd Rafizi Bin Ramli**
> Ibu Pejabat Parti Keadilan Rakyat
> A-1-09 Merchant Square 1
> Jalan Tropicana Selatan
> 474100 Petaling Jaya
> Selangor **By AR Registered Post/By Hand**

Mkini Dotcom Sdn Bhd
No. 48 Jalan Kemuja
Jalan Bangsar Utama
59000 Kuala Lumpur **By Registered Post**

Dear Sirs,

Re: Publication Defamatory Of Dato Sri Dr Mohamad Salleh Bin Ismail, National Feedlot Corporation Sdn Bhd, National Meat And Livestock Corporation Sdn Bhd And Agroscience Notice Of Action

We represent Dato Sri Dr Mohamad Salleh Bin Ismail of No. 10, Jalan Setia Kasih 1, Bukit Damansara, 50490 Kuala Lumpur, National Feedlot Corporation Sdn Bhd (NFCorp), National Meat and Livestock Corporation Sdn Bhd (NMLC), Agroscience Industries Sdn Bhd (AISB) and Real Food Company Sdn Bhd (RFC) all of Tingkat 2, No. 2-4, Jalan Manau, 50744 Kuala Lumpur (hereinafter referred to as "our said Clients").

We are instructed to state as follows:

1. that you, Mohd Rafizi bin Ramli, the first named above (hereinafter referred to as "Rafizi") are the Strategic Director of Parti Keadilan Rakyat, a political party incorporated in Malaysia and you, Mkini Dotcom Sdn Bhd the second named above (hereinafter referred to as "Mkini") are a company incorporated in Malaysia and the owner of an online television known as MalaysiaKini.TV;

2. that on 7.3.2012 you Rafizi at Ibu Pejabat Parti Keadilan Rakyat A-1-09, Merchant Square 1, Jalan Tropicana Selatan 1, 47410 Petaling Jaya, Selangor Darul Ehsan ("PKR office") caused to be printed, circulated and published an article entitled "SKANDAL NFC: BUKTI BAGAIMANA DANA AWAM UNTUK PROJEK FIDLOT DIGUNAKAN SEBAGAI 'JAMINAN' PINJAMAN PERIBADI UNTUK MEMBELI 8 UNIT HARTANAH MEWAH DI KL ECO CITY, BANGSAR" (hereinafter referred to as "the said Article"). The full contents of the said Article is set down hereunder:-

> Seperti yang dijanjikan, Keadilan hari ini tampil dengan bukti kukuh bagaimana dana awam yang disalurkan kepada NFC untuk projek berimpak tinggi dan berkepentingan awam telah disalahgunakan bagi tujuan peribadi keluarga Dato' Seri Shahrizat yang memiliki NFC.
>
> *Mondus operandi* yang digunakan adalah mudah - sejumlah besar dana tersebut didepositkan ke dalam bank-bank tertentu. Keluarga Dato' Seri Shahrizat kemudiannya membuat pinjaman pembiayaan untuk membeli pelbagai hartanah mewah di bawah nama mereka walaupun secara peribadinya, mereka tidak mempunyai simpanan yang kukuh di bank tersebut.

Semakan dengan bank tempatan mengesahkan fakta-fakta berikut setakat 16.2.2012 (yang disokong dengan dokumen carian kredit rasmi bank tersebut yang disertakan bersama):

1. Lampiran A mengesahkan bahawa National Feedlot Corporation Sdn Bhd mempunyai simpanan deposit berjumlah RM71,395,617 dalam akaun 01181839801 dan RM90,972 dalam akaun 03984628723 di sebuah bank tempatan.

2. Lampiran B mengesahkan bahawa syarikat milik penuh keluarga Dato' Seri Shahrizat Jalil iaitu National Meat & Livestock Corporation Sdn Bhd mempunyai deposit berjumlah RM1,872,254 di akaun bernombor 03147802316 di bank tersebut.

3. Lampiran C mengesahkan bahawa syarikat milik penuh keluarga Dato Seri Shahrizat Jalil iaitu Agroscience Industries Sdn Bhd mendapat kemudahan pembiyaan berbaki RM197,338 melalui pinjaman bernombor 02050032605, walaupun syarikat itu hanya mempunyai simpanan berjumlah RM927 di bank tersebut.

4. Lampiran D mengesahkan bahawa Dato' Seri Salleh Ismail mendapat pinjaman peribadi berbaki RM4,391,240 untuk membiayai secara bersama pembelian hartanah melalui pinjaman bernombor 02062369427 dan menjadi penjamin kepada satu lagi pinjaman hartanah bernombor 02073919403 berbaki RM663,743, walaupun beliau secara peribadi hanya mempunyai simpanan RM421 di bank tersebut.

Secara jelas, ini membuktikan bagaimana dana awam yang diberikan kepada NFC untuk mengusahakan projek fidlot telah diselewengkan untuk dijadikan jaminan untuk mendapatkan pinjaman peribadi dan dibelanjakan dengan membeli hartanah-hartanah di atas nama peribadi mereka.

Semakan KEADILAN menunjukkan bahawa pinjaman peribadi Dato' Seri Salleh Ismail dari bank tersebut telah digunakan untuk membeli 8 unit hartanah di KL Eco City Sdn Bhd seperti berikut (bukti pembelian dan rekod pinjaman dalam LAMPIRAN E):

Unit	**Nilai Tebusan Pinjaman** (Forced Sale Value)
28-01	RM 1,479,628
28-02	RM1,105,380
28-03	RM1,105,380
28-3A	RM1,111,788
28-05	RM1,111,788

28-06	RM1,105,380
28-07	RM1,105,380
28-08	RM1,564,142
Jumlah	RM9,688,866

Nilai tebusan pinjaman adalah anggaran harga hartanah yang dapat diperolehi semasa lelongan dan lebih rendah dari harga pasaran. Berdasarkan harga pasaran semasa unit komersil di KL Eco City iaitu RM1,000 hingga RM1,100 setiap kaki persegi, KEADILAN menganggarkan harga pasaran semasa unit-unit ini boleh mencecah RM12juta.

Kaedah menyalahgunakan dana awam untuk mendapatkan pinjaman peribadi seperti ini adalah menyalahi mandat yang diberikan kepada NFC untuk membangunkan projek berkepentingan nasional.

KEADILAN juga melahirkan rasa bimbang melihatkan rekod pembayaran pinjaman yang buruk; termasuklah tidak membayar bayaran pinjaman dalam bulan Julai dan Ogos 2011 selama dua bulan berturut-turut. Dalam bulan Disember 2011, perkara ini berulang kembali.

KEADILAN juga mendesak supaya Dato' Seri Najib Tun Razak menunaikan janji beliau untuk membekukan semua asset NFC, termasuklah simpanan tetap berjumlah RM71.4 juta ini.

Mohd Rafizi Ramli
Pengarah Strategi KEADILAN

3. that on 7.3.2012, you Rafizi caused to be published another article in your web known as www.rafiziramli.com on the internet which article is entitled "Bukti Bagaimana Dana Awam Untuk Projek Fidlot Digunakan Sebagai 'Jaminan' Pinjaman Peribadi Untuk Membeli 8 Unit Hartanah Mewah Di KL Eco City, Bangsar" (hereinafter referred to as "the said Second Article"). The full contents of the said Second Article is set down hereunder:

> Seperti yang dijanjikan, KEADILAN hari ini tampil dengan bukti kukuh bagaimana dana awam yang disalurkan kepada NFC untuk projek berimpak tinggi dan berkepentingan awam telah disalahgunakan bagi tujuan peribadi keluarga Dato Seri Shahrizat yang memiliki NFC.
>
> *Modus operandi* yang digunakan adalah mudah - sejumlah besar dana tersebut didepositkan ke dalam bank-bank tertentu. Keluarga Dato' Seri Shahrizat kemudiannya membuat pinjaman pembiayaan untuk membeli pelbagai hartanah mewah di bawah nama mereka walaupun secara peribadinya, mereka tidak mempunyai simpanan yang kukuh di bank tersebut.

Semakan dengan bank tempatan mengesahkan fakta-fakta berikut setakat 16.2.2012 (yang disokong dengan dokumen carian kredit rasmi bank tersebut yang disertakan bersama):

1. Lampiran A mengesahkan bahawa National Feedlot Corporation Sdn Bhd mempunyai simpanan deposit berjumlah RM71,395,617 dalam akaun 01181839801 dan RM90.972 dalam akaun 03984628723 di sebuah bank tempatan.

2. Lampiran B mengesahkan bahawa syarikat milik penuh keluarga Dato' Seri Shahrizat Jalil iaitu National Meat & Livestock Corporation Sdn Bhd mempunyai deposit berjumlah RM1,872,254 di akaun bernombor 03147802316 di bank tersebut.

3. Lampiran C mengesahkan bahawa syarikat milik penuh keluarga Dato' Seri Shahrizat Jalil iaitu Agroscience Industries Sdn Bhd mendapat kemudahan pembiayaan berbaki RM197.338 melalui pinjaman bernombor 02050032605, walaupun syarikat itu hanya mempunyai simpanan berjumlah RM927 di bank tersebut.

4. Lampiran D mengesahkan bahawa Dato: Seri Salleh Ismail mendapat pinjaman peribadi berbaki RM4,391,240 untuk membiayai secara bersama pembelian hartanah melalui pinjaman bernombor 02062369427 dan menjadi penjamin kepada satu lagi pinjaman hartanah bernombor 02073919403 berbaki RM663,743, walaupun beliau secara peribadi hanya mempunyai simpanan RM421 di bank tersebut.

Secara jelas, ini membuktikan bagaiman dana awam yang diberikan kepada NFC untuk megusahakan projek fidlot telah diselewengkan untuk dijadikan jaminan untuk mendapatkan pinjaman peribadi dan dibelanjakan dengan membeli hartanah-hartanah di atas nama peribadi mereka.

Semakan KEADILAN menunjukkan bahawa pinjaman peribadi Dato' Seri Salleh Ismail dari bank tersebut telah digunakan untuk membeli 8 unit hartanah di KL Eco City Sdn Bhd seperti berikut (bukti pembelian dan rekod pinjaman dalam Lampiran E):

Unit	**Nilai Tebusan Pinjaman (Forced Sale Value)**
28-01	RM1,479,628
28-02	RM1,105,380
28-03	RM1,105,380
28-3A	RM 1,111,788
28-05	RM1,111,788

28-06	RM1,105,380
28-07	RM1,105,380
28-08	RM1,564,142
JUMLAH	RM9,688,866

Nilai tebusan pinjaman adalah anggaran harga hartanah yang dapat diperolehi semasa lelongan dan lebih rendah dari harga pasaran. Berdasarkan harga pasaran semasa unit komersil di KL Eco City iaitu RM 1,000 hingga RM1,100 setiap kaki persegi, KEADILAN menganggarkan harga pasaran semasa unit-unit ini boleh mencecah RM12 juta.

Kaedah menyalahgunakan dana awam untuk mendapatkan pinjaman peribadi seperti ini adalah menyalahi mandate yang diberikan kepada NFC untuk membangunkan projek berkepentingan nasional.

KEADILAN juga melahirkan rasa bimbang melihatkan rekod pembayaran pinjaman yang buruk; termasuklah tidak membayar bayaran pinjaman dalam bulan Julai dan Ogos 2011 selama dua bulan berturut-turut. Dalam bulan Disember 2011, perkara ini berulang kembali.

Memandangkan simpanan tetap NFC sebanyak RM71.4 juta berkait rapat dengan pembelian harta-harta peribadi ini, pengurusan NFC dan Dato' Shahrizat Jalil, sebagai wakil keluarganya, perlu memberi jaminan bahawa sebarang masalah pembayaran membabitkan pinjaman peribadi mereka tidak akan memberi apa-apa kesan kepada dana awam yang disimpan di bank yang sama.

Keadilan juga mendesak supaya Dato' Seri Najib Tun Razak menunaikan janji beliau untuk membekukan semua asset NFC, termasuklah simpanan tetap berjumlah RM71.4 juta ini.

Mohd Rafizi Ramli
Pengarah Strategi KEADILAN

4. that on 7.3.2012 at PKR office, you Rafizi caused to published a statement (hereinafter referred to as "the news conference statement") and you, Mkini through your online television caused to be published, broadcast and disseminated the news conference statement which is reproduced in the following transcripts:

Good afternoon today kita ada tiga press release berkaitan dengan NFC, (talking with Zuraidah while mic is shut) satu melibatkan pendedahan terbaru mengenai satu lagi siri pembelian hartanah-hartanah mewah, yang ada kaitan dengan wang NFC. Yang kedua ialah mengenai saman Dato' Seri Shahrizat Jalil terhadap YB Zuraida dan saya sendiri, dan yang ketiga adalah mengenai penglibatan pimpinan UMNO dalam

pembangunan yang kita dedahkan hari ini, there are some elements, we feel that there are some elements of a conflict of interest.

Jadi saya mulakan dengan kenyataan saya, yang agak tebal, saudara-saudari sudah ada, dia agak numerical dan jugak di belakang itu juga ada there are lot of references you can, you have to make. Dan it can be quite confusing because that's a print out from the credit system.

Saya bacakan, kemudian kalau diakhir kalau ada soalan kita boleh ambil soalan. Seperti yang dijanjikan, Keadilan hari ini tampil dengan bukti, bagaimana dana awam yang disalurkan kepada NFC, untuk projek berimpak tinggi dan berkepentingan awam telah disalahgunakan bagi tujuan keluarga Dato' Seri Shahrizat Jalil yang menguasai NFC.

Sebelum ini kita telah sebut melalui pembelian kondominium-kondominium di Singapura, bagaimana mereka mendepositkan dan juga dana daripada NFC untuk mendapatkan pinjaman. Hari ini kita berikan bukti, we will show you how it is done. *Modus operandi* yang digunakan adalah mudah.

Sejumlah besar dana didepositkan ke dalam bank-bank tertentu. Keluarga Dato' Seri Shahrizat kemudiannya akan membuat pinjaman pembiayaan untuk membeli pelbagai hartanah mewah di bawah nama mereka walaupun secara peribadinya, mereka tidak mempunyai simpanan kukuh di bank-bank tersebut.

Semakan dengan sebuah bank tempatan, saya tak nak sebut bank sebab itu saya ada padamkan kod-kod bank, kalau saya tak padamkan nanti orang tau bank mana. Yang Hitam itu saudara-saudari cari selepas ini. Semakan kita dengan sebuah bank tempatan, mengesahkan fakta-fakta berikut, dan data ini valid setakat 16 Februari 2012, its only about two weeks ago. Pertama kalau saudara-saudari tengok Lampiran A di muka surat 4. Lampiran A mengesahkan bahawa National Feedlot Corporation Sendirian Berhad mempunyai simpanan deposit berjumlah 71,395,617 ringgit dalam akaun number 011 saudara bacalah dan juga 90,972 dalam akaun 039 etc. di sebuah bank tempatan. That's the first one.

National Feedlot Corporation ada 72 million deposit at that particular bank which I will not name here.

If you go to the next page Lampiran B, serupa juga National Meat and Livestock Corporation Sdn Bhd juga mempunyai deposit simpanan sebanyak 1.8 million. DP itu maksudnya deposit. 1.8 million. Yang ini adalah syarikat yang dikawal sepenuhnya oleh keluarga Dato' Seri Shahrizat dan tak da kena mengena dengan NFC.

Ok let see, Lampiran C di muka surat 6 saudara-saudari juga akan tengok Agroscience Industries Sendirian Berhad. Ini syarikat induk yang menguasai NFC. This one a bit interesting if you see. Its at the same bank, bank yang sama tadi ada 72juta simpanan tadi, tapi yang ini, walaupun sebenarnya mereka tidak ada simpanan pun yang ada hanya 927 ringgit, mereka diberikan kredit facility sebanyak 197,000. They have a loan akaun number 02050032605 yang berjumlah sebanyak 197,000.

Daripada sini saya rasa saudara-saudari as we go along can understand how it is done. You put a money into a bank and then all the other companies, walaupun not under that particular account, walaupun bukan under NFC then so long its related to you then you can have all sorts of credit facilities.

Dan yang inilah yang digunakan oleh Dato' Sri Salleh Ismail. Kalau saudara-saudari tengok Lampiran D di muka surat 7. Saudara-saudari boleh tengok. Saya mintak maaf kepada Dato' Salleh sebab kena tunjukkan loan profile dia. We can show the loan profile dia at this particular bank, simpanannya hanya 421 ringgit tetapi dia ada joint borrowing maksudnya pinjaman yang dibuat dengan seorang lagi, kita syaki kita rasa itu adalah anak beliau. Satu berjumlah 4,391,240 ringgit, sorry dan satu lagi adalah sebagai guarantor juga untuk beli hartanah sebanyak 663,743.

Ini yang kita persoalkan kerana kita tengok baki yang dia ada yang dia simpan dalam bank atas nama dia hanyalah 421 ringgit, tetapi oleh kerana, dia sudah ada kekuatan simpanan daripada NFC di bawah akaun membolehkan mereka untuk mendapat pembiayaan peribadi untuk membeli pelbagai hartanah mewah ya.

Sebab itu saya kata secara jelas, ini membuktikan bagaimana dana awam yang diberikan kepada NFC untuk mengusahakan projek feedlot telah diselewengkan, untuk dijadikan jaminan dan mendapatkan pinjaman peribadi dan dibelanjakan dengan membeli hartanah-hartanah diatas nama peribadi dan dibelanjakan dengan membeli hartanah-hartanah di atas nama mereka. Jadi, oleh kerana kita tahu dia sudah ada pinjaman, kita pun pergi semak lagi dan kita dapati bahawa pinjaman itu digunakan untuk membeli 8 unit hartanah di KL Eco City Sdn Bhd, satu pembangunan yang sedang berjalan di kawasan YB Nurul Izzah, that's why she is here and she will explain further the background.

Dan bukti pembelian dan rekod pinjaman, saudara-saudari boleh tengok dalam Lampiran E, dari muka surat 8 hingga ke muka surat 15. Laporan E ini adalah maklumat collateral ataupun maklumat hartanah yang dibeli. Jadi tengok yang pertama, contohnya developer KL Eco City Sdn Bhd, unit

numbernya unit 2801 dan juga forced sale value 1 perpuluhan 479 juta: Forced sale value adalah nilaian yang digunakan oleh bank untuk menilai pinjaman, credit worthiness, in case kalau mereka terpaksa lelong. Because dia tak pakai nilai pasaran dalam system credit. Jadi kalau saudara-saudari, semakan kita daripada semua daripada collateral system ini menunjukkan Dato' Sri Salleh di bank ini 8 unit yang dibeli daripada KL Eco City daripada unit 28-01 sehinggalah 28-08, harga nilaiannya adalah diantara 1 perpuluhan 56 juta yang tertinggi. Kemudian 1 perpuluhan 47 juta dan ada kebanyakannya 1 perpuluhan 1 juta. Kesemua 8 hartanah tadi nilaian forced sale valuenya adalah sebanyak 9 perpuluhan 7 juta. Forced sale value atau nilaian tebusan pinjaman yang saya sebut tadi, adalah anggaran harta hartanah, harga hartanah yang dapat diperolehi semasa lelongan. So the value is always lower than the market value. The current market value, kalau kita boleh tunjukkan sekarang.

These are, these are all jenis-jenis yang dibeli, yang 8 unit. Yang kita tunjukkan ada juga yang residential area, residential units tapi yang dibeli adalah retail units. The current market value is about 1,000 to 1,100 per square feet. And the unit yang dibeli is about 1,500 to 1,600 square feet per unit, 8 unit. So altogether sebab itu kita anggarkan bahawa market value of all the 8 units that they bought antara hingga boleh mencecah sehingga 12 juta value. 9.7 is only for the forced sale.

Ok, I'm done jadi property realty. Let's get back ok. Alright.

Jadi sebab itu kita bertegas bahawa, kaedah yang digunakan oleh keluarga Dato' Seri Shahrizat Jalil ini, iaitu dengan mendapatkan pinjaman peribadi, atas deposit NFC yang diletakkan di bank tertentu, menyalahi mandate yang diberikan kepada NFC.

Saya juga nak tarik perhatian saudara-saudari, saya tak sertakan rekod, sebab yang itu agak mengaibkan, jadi saya tidak meletakkan rekod pembayaran. Cuma saya boleh sebut bahawa, rekod pembayarannya adalah sangat buruk, bagi kelapan-lapan pinjaman ini. Most of the time, rekod yang bermula daripada bulan Mac 2011, pada masa mereka mula-mula beli sampai ke sekarang, hampir setiap bulan tertunggak. Samada satu bulan ataupun dua bulan. Ada bulan-bulan yang tertunggak sampai tiga bulan contohnya dalam bulan Disember 2011.

Jadi oleh kerana rekod pembayaran pinjaman yang sangat buruk ini, dan juga kita faham bahawa simpanan tetap NFC sebanyak 71.4 juta berkait rapat dengan pembelian harta-harta peribadi ini. They leverage on each other, the loans, the deposit are used to leverage on the loans, jadi pengurusan NFC dan juga Dato' Seri Shahrizat Jalil sebagai mewakili keluarga beliau, kita desak supaya beri jaminan bahawa sebarang masalah pembayaran

yang membabitkan pinjaman peribadi mereka yang 8 unit ini tidak akan memberi apa-apa kesan ataupun recourse kepada bank yang boleh menyebabkan dana awam yang disimpan itu terjejas.

Sebab kita tidak tahu, apa arrangement di antara bank. This is money market arrangement. Kita tak tahu apa perjanjiannya. Kita khuatir oleh kerana rekod pembayaran, they bought under their name, they didn't pay. It's always late instalments. We fear that this might have a corresponding repercussions on the 71.4 million fixed deposits that NFC has in this particular bank.

Dan I think what it shows, kalau saudara-saudari tengok pembelian in Mac 2011 dan sehinggalah bulan Februari 2012, Januari 2011, semuanya masih ada lagi transaksi yang melibatkan bank-bank dan juga akaun dan pinjaman di bank ini. Menunjukkan bahawa, arahan Dato' Seri Najib bahawa asset telah dibekukan itu tidak dilaksanakan atau dia tidak beri arahan yang jelas. Samada diberikan arahan sekali lagi, ataupun diambil tindakan kepada mana-mana pihak yang terus menerus menggunakan asset dan wang NFC walaupun arahan diberikan supaya asset dibekukan.

We are now instructed to say that the words complained in the said Article, in the said Second Article and in the news conference statement as a whole are false and defamatory of our said Clients. The said Article, in the said Second Article and in the news conference statement as a whole impute, *inter alia* that our said Clients are:

(a) That our said Clients are dishonest;

(b) Our said Clients are criminal;

(c) Our said Clients are no worth any credit;

(d) Our said Clients cannot be relied upon; and

(e) Our said Clients cannot be trusted.

The words referred to in the said Article, in the said Second Article and in the news conference statement are injurious of our said Client's personal life, business, have subject to our said Clients to disrepute, public contempt and odium.

On behalf of our said Clients, we demand of you Rafizi in respect of the said Article, in the said Second Article and in the news conference statement within SEVEN (7) days from the date of receipt of this letter:

A full and unequivocal apology and retraction on terms to be approved by us, to be published in two (2) national newspapers:

(a) A full and unequivocal apology and retraction be published in two (2) national newspapers;

(b) Your written undertaking not to repeat the matters complained off; and

(c) Compensation for the sum of RM300,000,000.00 to be paid to our said Clients.

On behalf of our said Clients, we demand of you Mkini in respect of the said Article, in the said Second Article and in the news conference statement within SEVEN (7) days from the date of receipt of this letter:

(d) A full and equivocal apology and retraction on terms to be approved by us, to be published in two (2) national newspapers;

(e) Your written undertaking not to repeat the matters; complained off; and

(f) Compensation for the sum of RM200,000,000.00 to be paid to our said Clients.

TAKE NOTICE that in the event you fail and/or refuse and/or neglect to comply with the demand our said Clients shall have no alternative but to commence such legal proceeding against you as our said Clients deem fit including a prayer for injunction to restrain you, your servants and/or agents from repeating the aforesaid defamatory statement without further reference to you.

Meanwhile our said Clients reserves all its rights.

Yours faithfully,

Messrs Wan Shahrizal, Hari & Co

[14] The law and/or practice on this area also requires to give such notice and seek apology. If the notice itself does not disclose the grounds for apology, it will follow that the first defendant has no obligation to tender an apology. The said relevant section under the Defamation Act 1957 is s. 10 reads as follows:

Apology in mitigation of damages

10(1) In any action for defamation the defendant may (after notice in writing of his intention to do so duly given to the plaintiff at the time of filing his written statement of his case) give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of such action or as soon afterwards as he had an opportunity of doing so in case the action shall have been commenced before there was an opportunity of making or offering such apology.

A (2) In an action for libel contained in any newspaper any defendant who has paid money into court under the provisions of any written law relating to civil procedure may state in mitigation of damages, in his written statement of his case, that such libel was inserted in such newspaper without actual malice and without gross negligence and that, before the commencement of the action or at the earliest opportunity afterwards, he
B inserted or offered to insert in such newspaper a full apology for the said libel, or, if the newspaper in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper to be selected by the plaintiff in such action.

C **[15]** For reasons stated above, we allowed the appeal and set aside the orders against the appellant with costs of RM110,000 for here and below, subject to allocatur. As an ancillary order, after hearing the parties, we ordered all monies paid by the appellant to the respondent to be refunded with interests within 30 days of the order. The order for refund and terms
D was accepted by the respondent. As a consequential order, the cross-appeal was dismissed.

We hereby ordered so.

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